IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 233 of 1985
Date of decision: September 14, 2007

Devinder Singh and another

.....APPELLANTS

VERSUS

Mukhtiar Singh and others

.....RESPONDENTS

CORAM: HON'BLE MR JUSTICE T.P.S.MANN

PRESENT: Mr G.S.Punia, Advocate
for the appellants.

None for the respondents.

T.P.S .MANN, J.

The appellants are aggrieved by the judgment and decree passed by learned Additional District Judge, Ludhiana on 10.9.1984, whereby their appeal was dismissed on the ground that it was not competent as one of the defendants was not made a party-respondent and that the provisions of Order 41 Rule 20 CPC were not attracted.

The appellants had initially filed a civil suit for declaration that they were absolute owners in equal shares of the entire land, as described in the heading of the plaint, and for declaration that the mortgage deeds dated 20.12.1978, 20.12.1978 and 15.1.1979 and sale deeds dated 31.7.1978, 20.4.1978, 20.4.1978, 20.4.1979 and 8.10.1979 relating to the said ancestral, co-parcenary and joint Hindu family suit land were without consideration, legal necessity etc. The possession of half share of the suit

land was also sought, besides permanent injunction restraining Mukhtiar Singh-defendant from interfering and obstructing in the joint possession of the plaintiffs over the suit land. In the aforementioned suit, seven persons were impleaded as defendants, including one Jagrup Singh son of Kehar Singh. Vide judgment dated 30.8.1982, learned Subordinate Judge Ist Class, Samrala dismissed the said suit with costs. Aggrieved from the same, the plaintiffs/appellants filed an appeal before learned Additional District Judge, Ludhiana. Along with the appeal, certified copy of the judgment and decree passed by learned Subordinate Judge Ist Class, Samrala dated 30.8.1982 was also filed. However, in the memorandum of appeal, aforementioned Jagrup Singh son of Kehar Singh, who was one of the defendants before the trial Court, was not impleaded.

An objection was raised on behalf of the defendants-respondents that the appeal was not competent because one of the defendants, namely, Jagrup Singh, had not been impleaded as a party-respondent in the same. On coming to know about the objection raised on behalf of the defendants, learned counsel for the plaintiffs-appellants filed an application under Order 41 Rules 1 and 3, Section 151 read with Order 6 Rule 17 CPC for amendment of the memorandum of appeal so as to include the name of Jagrup Singh as one of the respondents. In the said application, counsel for the plaintiffs-appellants took up the stand that the memorandum of appeal was drafted as per the certified copy of the judgment of the trial Court supplied to them in the case in which the name of Jagrup Singh did not find mentioned. Therefore, the non-inclusion of his name in the memorandum of appeal was a bona fide mistake.

Learned Additional District Judge, Ludhiana did not accept the

application filed on behalf of the plaintiffs-appellants for amendment of the memorandum of appeal and went ahead to dismiss the same as being not competent, without touching the merits of the same.

Second appeal under Section 100 CPC is maintainable only if this Court is satisfied that substantial question of law is involved in the same. As is clear from the above, this Court finds that the appeal of the plaintiffs-appellants should not have been dismissed in view of the provisions of Order 41 Rule 20 CPC and the same should have been decided on merits after allowing the application of the plaintiffs-appellants for impleading aforementioned Jagrup Singh son of Kehar Singh as a party-respondent.

Under order 41 Rule 20 CPC, it is the duty of the Court hearing the appeal to adjourn the hearing to a future day so as to allow any person who was a party to the suit in the trial Court, to be made a respondent in the appeal. Further that such an addition of respondent could be made within the period of limitation prescribed for filing the appeal, but the Court, for the reasons to be recorded, can allow it to be done, on such terms as to costs as it thinks fit.

It is the admitted case of the parties that before the trial Court there were seven defendants, including one Jagrup Singh son of Kehar Singh, whose name figured at Sr.No.6. After dismissal of the suit, the plaintiffs-appellants obtained certified copy of the judgment and decree so as to challenge the same by filing an appeal. As was clear from the certified copy of the judgment passed by learned trial Court, the names of only six persons were mentioned as defendants, whereas it did not contain the name of Jagrup Singh son of Kehar Singh, as one of the defendants. It is apparent

that while filing the appeal, the appellants' counsel copied the parties from the heading of the judgment passed by the trial Court and accordingly, Jagrup Singh son of Kehar Singh could not be impleaded as one of the respondents in the memorandum of appeal as his name and parentage were not mentioned therein. In case, learned counsel for the plaintiffs-appellants had been careful in preparing the memorandum of appeal from the certified copy of the decree sheet, then all the seven defendants could have been impleaded as respondents. However, he relied only on the certified copy of the judgment of the trial Court so as to prepare the memorandum of appeal. There appeared to be a bona fide mistake on the part of the counsel, who filed the appeal on behalf of the plaintiffs before the lower Appellate Court. It is also clear that once the objection was raised on behalf of the respondents in the appeal before the lower Appellate Court, the counsel for the plaintiffs-appellants wasted no time in filing the application for impleading Jagrup Singh as a party- respondent in the memorandum of appeal. Moreover, both the plaintiffs-appellants were minors when the appeal on their behalf was filed before the lower Appellate Court. They were represented by their next friend Mal Singh , who was their maternal grand father. Accordingly, the plaintiffs-appellants could take benefit of provisions of Limitation Act, which allowed them to act on their own and according to their wish after attaining majority.

In ***Puran Singh vs Gehal Singh and others,*** *1968 Punjab Law Reporter 883* while dealing with an identical situation, this Court held such a mistake on the part of counsel to be bona fide and honest, who did not notice the error at the time of filing of appeal and mechanically copied out the names of the parties in the memorandum of appeal from those

mentioned in the heading of the judgment of the trial Court. The Court also relied upon a Full Bench decision of this Court in ***Notified Area Committee, Buria*** ***vs*** ***Gobind Ram Lachhman Dass,*** *AIR 1959 Punjab 277* for allowing the addition of a party in the memorandum of appeal after the period of limitation was over, if there was a bona fide and honest mistake on the part of the appellant. It was held in the aforementioned Full Bench decision that apart from the provisions of Order 41 Rule 20 CPC, the Appellate Court had inherent powers to permit parties to be added to appeals in suitable cases and the language of Rule 20 of Order 41 CPC was not exclusive or exhaustive so as to deprive the Appellate Court of the inherent powers in this respect.

In view of the above, it is held that the lower Appellate Court was not justified in not invoking the provisions of Order 41 Rule 20 CPC and in not allowing the impleadment of Jagrup Singh son of Kehar Singh as a party-respondent.

Accordingly, the appeal is accepted. Judgment and decree dated 10.9.1984 passed by Additional District Judge, Ludhiana is set aside and the application filed by the plaintiffs-appellants for impleadment of Jagrup Singh son of Kehar Singh as a party-respondent is accepted. The matter is remanded to lower Appellate Court to decide the appeal, preferred by the plaintiffs-appellants, on merits.

September 14, 2007 **(T.P.S.MANN)**
Pds **JUDGE**

Whether to be referred to Reporter : Yes / No